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LETTER DATED 25 MARCH 1994 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit to you, for the information of the Security Council, the following particulars concerning the twelfth session of the Governing Council of the United Nations Compensation Commission, which was held from 21 to 23 March 1994.

At the forty-first plenary meeting, held on 23 March 1994, the Governing Council asked me to bring to your attention and that of the Secretary-General its members' concern at the fact that the Security Council is to take decisions on the first compensation payments over the next few months, inasmuch as the funding available in the Compensation Fund is insufficient for such payments. I am enclosing herewith the letter that I sent you on this subject (S/1994/366).

In the light of requests from several Governments, the Governing Council resolved to confirm that the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation (S/AC.26/Dec.19 (1994)).

The Council, having heard the report of the chairman of working group A, also adopted two decisions relating to procedures for the payment of compensation, namely, "Priority of payment and payment mechanism" (S/AC.26/Dec.17 (1994)) and "Distribution of payments and transparency" (S/AC.26/Dec.18 (1994)).

The text of these three decisions is annexed hereto.

The Council, in the light of requests from several Governments which are facing difficulties with regard to the timely submission of their claims in categories E and F, granted an additional extension of the periods for submitting such claims, to 1 July 1994 for claims in category E and to 1 August 1994 for claims in category F. The Council also granted to some Governments, for technical reasons, an extension to 1 July 1994 for the submission of computerized claims in category C.

The Council also took note of the consolidated claims submitted after the expiry of the periods it had established by several Governments and agencies

responsible for claims from persons unable to apply to a Government. In accordance with article 12, paragraph 2, of the provisional rules for the claims procedure, the Council decided to accept such consolidated claims.

In the light of a request from the Government of Kuwait that members of the Commission should be appointed to consider the claim submitted by that Government for the costs of extinguishing the fires in its oil wells wilfully ignited by Iraq, the Council took note of the extraordinary risk to health and safety posed by those fires and requested the secretariat of the Commission to take the steps required, within existing resources, to begin the consideration and processing of that claim, including the preparation of recommendations for the establishment of a panel of Commission members to hear the said claim.

The Governments of India, Iraq and Kuwait, States not members of the Governing Council, had expressed a wish to make statements at the recent session, and the Council invited their representatives to address it at the fortieth plenary meeting.

The Council decided that the thirteenth session would be held from 24 to 27 May 1994.

(Signed) Fernando Valenzuela MARZO
President of the Governing Council
United Nations Compensation Commission

Annex I

Priority of payment and payment mechanism

Guiding principles

Decision taken by the Governing Council of the United Nations Compensation Commission at its 41st meeting, held at Geneva on 23 March 1994*

1. In striving to resolve the question of how to allocate the funding available to pay awards to claimants within each category of claims as well as how to allocate available funding among the various categories of claims, the Governing Council has been guided by the following basic principles:

(a) The Compensation Commission should ensure that similarly situated claimants within each category of claims are treated equally, to the extent feasible, regardless of the chronological order in which their claims are decided;

(b) Claimants with claims in the three categories of urgent claims (categories A, B and C) shall received priority of treatment, including at both the processing and the payment stages, in accordance with the prior decisions and statements of the Governing Council.

Payment mechanism

2. Payment of an initial amount of US$ 2,500 (or the principal amount of the award, if less) will be made to each successful claimant in categories A, B and C.

3. Such payments in respect of successful claimants in categories A, B and C will be made by the Compensation Commission to Governments as awards in each category are confirmed by the Governing Council.

4. Such payments will begin when sufficient funds have been accumulated in the Compensation Fund to make payment on all claims approved in the first instalments in categories A, B and C. Subsequent such payments will also be made when sufficient funds have been accumulated in the Compensation Fund to make payment on all approved claims, within each instalment.

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* Decisions of the Governing Council of the United Nations Compensation Commission are now being issued under the symbol S/AC.26/Dec. The present decision was previously issued under the symbol S/AC.26/Dec.17 (1994).

Allocation of funds

5. For an initial period, successful claimants in categories A, B and C will receive all funds available in the Compensation Fund for paying claims, until each has received payment of the initial amount referenced in paragraph 2 above.

6. After the payments in paragraph 2 have been made, the funds available to the Commission for the payment of claims will be allocated as follows:

The Executive Secretary will transfer funds to each appropriate Government in respect of approved claims in all categories. Such transfers will be made when there are funds in the Compensation Fund at least sufficient to make a minimum payment of US$ 5,000 (or the unpaid principal amount of the award, if less) in respect of each approved claim. Amounts transferred in addition to this minimum of US$ 5,000 payment will be proportional to the ratio between the unpaid balance of approved claims submitted by that Government and the unpaid balance of all approved claims.

7. The Compensation Commission will retain an adequate operating reserve consisting of an amount sufficient to cover at least one year's operating expenses.

Revision of the system

8. The Governing Council will monitor the payment system and make revisions wherever and whenever needed in order that the mechanism may evolve and adjust to ongoing circumstances, including the amounts available in the Fund for the payment of claims.

9. If there are insufficient funds to make payments in accordance with the mechanism outlined above, the Governing Council, keeping in mind the principles stated in paragraph 1 above, may decide on how to distribute any limited funds available. In particular, this should not exclude the possibility of distributing the amounts stated in paragraphs 2 and 6 above by successive payments.

Transparency

10. Distribution of compensation will be the responsibility of each Government concerned.

Annex II

Distribution of payments and transparency

Decision taken by the Governing Council of the United Nations Compensation Commission at its 41st meeting, held at Geneva on 23 March 1994*

1. Governments, exercising their responsibility for the distribution of payments of compensation for direct losses to successful claimants whose claims they have submitted, shall establish their own mechanisms to distribute payments in a fair, efficient and timely manner, subject to the following provisions:

(a) Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants. The Governments shall be required to provide explanations satisfactory to the Governing Council for any processing costs so deducted. Such fees shall be commensurate with the actual expenditure of Governments. In the case of awards payable to claimants in categories A, B and C, the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories D, E and F, the fees should not exceed 3 per cent. Any commission or charge on compensation received from the Compensation Commission imposed by Governments pursuant to national laws is to be considered a processing cost and may be deducted by the Government concerned. Without prejudice to future decisions concerning eligibility for compensation under category F, if a Government that has deducted a processing fee receives compensation for such costs under category F, it shall reimburse to claimants those fees deducted;

(b) Prior to or immediately following the receipt of the first payment from the Compensation Commission each Government shall provide information in writing through the Executive Secretary to the Governing Council on the arrangements that it has made for the distribution of funds to claimants, and subsequently promptly report any changes to those arrangements;

(c) If amounts of awards are specified by the Compensation Commission in respect of each individual claim, Governments should distribute funds to claimants within six months of receiving payment from the Compensation Commission, subject to the provisions of subparagraph (e) below;

(d) Not later than three months after the expiration of the time-limit for the distribution of each payment received from the Compensation Commission, Governments shall provide information on the amounts of payments distributed. Such reports shall refer to the category of claims and the instalment payment received from the Compensation Commission and shall also include information on the reasons for non-payment to claimants because claimants could not be located or for other reasons, as well as the explanations required on fees deducted under subparagraph (a) above;

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* Previously issued under the symbol S/AC.26/Dec.18 (1994).

(e) If a Government fails to distribute funds within six months of their receipt, or indicates that it needs additional time to distribute the funds, or if reports satisfying the requirements of subparagraph (d) above are not submitted to the Executive Secretary within the prescribed time; and where the Governing Council does not consider that exceptional circumstances exist, or is not satisfied with the reasons given for non-payment or with the adequacy of the reports submitted, the Governing Council may decide to ask for an explanation or further information from the Government concerned. In the absence of a response satisfactory to the Council, it may decide not to distribute further funds to that particular Government;

(f) After completing distribution of all payments received from the Compensation Commission, each Government should produce a final summary account of payments made, including who was paid, the exact amount received by each claimant and the date of each payment, as well as a report on amounts not distributed. Funds received by Governments from the Compensation Commission that Governments have not disbursed to claimants owing to inability to locate such claimants shall be reimbursed to the Compensation Fund, unless otherwise decided by the Governing Council;

(g) Governments shall make payments to claimants either in United States dollars or in other currencies. If Governments convert United States dollar payments received from the United Nations Compensation Commission into other currencies for distribution of awards to claimants, they shall notify the Governing Council on the method of conversion and exchange rate to be used, bearing in mind the interests of claimants in receiving full equivalent of their awards.

2. These provisions should also apply to the distribution of payments by any person, authority or body which has been designated by the United Nations Compensation Commission to collect and submit claims on behalf of persons who are not in a position to have their claims submitted by a Government.

3. The Governing Council will continue to monitor the distribution of payments to claimants and will make revisions and adjustments of the provisions established above, whenever deemed necessary.

Annex III

Military costs

Decision taken by the Governing Council of the United Nations Compensation Commission at its 41st meeting, held at Geneva on 24 March 1994*

The Governing Council confirms that the costs of the Allied Coalition Forces including those of military operations against Iraq, are not eligible for compensation.

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* Previously issued under the symbol S/AC.26/Dec. 19 (1994).